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7 ***Hugh Hardy***

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 TERRELL DESHON KEMP, SR.,

CASE NO.: 2:18-cv-00169-RFB-BNW

12 Plaintiff,

13 vs.

JOINT PRETRIAL ORDER

14 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; JAIL DIRECTOR
CAPTAIN SCHMIDT, in her individual and
15 official capacities; CORRECTIONAL
OFFICER HUGH HARDY, #6000;
NAPHCARE, INC., a Foreign Corporation;
16 DIRECTOR OF NURSING, ASHLEY
KOMASCAR, in her individual and official
17 capacities; LARRY WILLIAMSON M.D., in
his individual and official capacities,

18 Defendants.

19 Following pretrial proceedings in this cause,

20 IT IS SO ORDERED:

21 **I. Full Caption**

22 ***Terrell Deshon Kemp, Sr. v. Hugh Hardy, 2:18-cv-00169-RFB-BNW***

23 *///*

24

II. Trial Counsel

Counsel for Plaintiff

Snell & Wilmer, L.L.P.
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Erin M. Gettel, Esq.
Christian P. Ogata, Esq.
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Las Vegas, NV 89169
Phone: 702-784-5200
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Counsel for Defendant

Kaempfer Crowell
Lyssa S. Anderson, Esq.
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III. Statement of Jurisdiction

The parties agree that this Court has subject-matter jurisdiction in this case under 28 U.S.C. §1331 because Kemp's sole claim to be tried arises under 42 U.S.C. § 1983.

IV. Claims and Defenses

Plaintiff Terrell Kemp Sr. was involved in an encounter with Las Vegas Metropolitan Police Department ("LVMPD") Corrections Officer Hugh Hardy in booking on July 26, 2016. At trial, Kemp alleges a violation of his Fourth Amendment right under 42 U.S.C. § 1983 by asserting that excessive force was used in the encounter.

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1 **A. Kemp contends that:**

2 **a. Claim to be tried**

3 Following summary judgment, the sole claim to be tried is Kemp's claim for excessive
4 force in violation of the Fourth Amendment arising under 42 U.S.C. § 1983 (First Cause of
5 Action).

6 **b. Claims previously asserted and not to be tried**

7 In his amended complaint, Kemp asserted his § 1983 claim against Las Vegas
8 Metropolitan Police Department under *Monell v. Department of Social Services*, and claims for
9 deliberate indifference; negligence; negligence per se; negligent hiring, training, and supervision;
10 and gross negligence. All claims but Kemp's § 1983 claim against Hardy were disposed of on
11 summary judgment.

12 **c. Defenses to be tried**

13 Following summary judgment, Kemp contends that Hardy's remaining defenses to be
14 tried include: whether Hardy is entitled to qualified immunity.

15 **d. Defenses previously asserted and not to be tried**

16 Hardy previously raised an affirmative-exhaustion defense. On summary judgment, this
17 Court found that Kemp's "claim is not barred for failure to exhaust, as it is clear that the facility
18 was on notice as to the specific facts and nature of his complaint."¹

19 **B. Officer Hardy contends that:**

20 **a. Claim to be tried**

21 Following summary judgment, Hardy agrees that the sole claim to be tried is Kemp's
22 claim for excessive force in violation of the Fourth Amendment arising under 42 U.S.C. § 1983
23 (First Cause of Action).
24

1 **b. Defenses to be tried**

2 Following summary judgment, Hardy contends that his remaining defenses to be tried
3 include, but are not limited to, whether he is entitled to qualified immunity, whether his actions
4 were the proximate cause of Kemp's alleged damages, whether his actions actually constituted a
5 constitutional violation, and whether Kemp has mitigated his damages.

6 **c. Claims previously asserted and not to be tried**

7 In his amended complaint, Kemp asserted a § 1983 claim against Las Vegas Metropolitan
8 Police Department under *Monell v. Department of Social Services*, and claims for deliberate
9 indifference; negligence; negligence per se; negligent hiring, training, and supervision; and gross
10 negligence. All claims but Kemp's § 1983 claim against Hardy were disposed of on summary
11 judgment.

12 **d. Defenses previously asserted and not to be tried**

13 Hardy previously raised an exhaustion of administrative remedies defense. On summary
14 judgment, this Court found that Kemp's "claim is not barred for failure to exhaust, as it is clear
15 that the facility was on notice as to the specific facts and nature of his complaint."²

16 **V. Number of trial days and type of trial**

17 The parties agree that four days are needed for trial and that this case is to be tried with a
18 jury.

19 **VI. Trial by magistrate judge**

20 The parties have not all consented to trial at this time.

21 **VII. Stipulations or agreed statements of fact or law to which all parties consent.**

22 The parties agree to the following statements of fact:

23 ¹ ECF No. 125 at 14.

24 ² ECF No. 125 at 14.

1 4. FRCP 30(b)(6) witness of Las Vegas Metropolitan Police Department
2 c/o Kaempfer Crowell
3 1980 Festival Plaza Drive, Suite 650
4 Las Vegas, NV 89135

5 This witness is expected to testify regarding his/her knowledge of the facts and
6 circumstances surrounding the subject event as well as the allegations set forth in the Complaint,
7 as well as Standard Operating Procedures of LVMPD. This witness is expected to testify in
8 person.

9 **B. Officer Hardy's:**

10 1. Terrell Deshon Kemp, Sr.
11 c/o Snell & Wilmer
12 3883 Howard Hughes Pkwy, Ste 1100
13 Las Vegas, NV 89169

14 Mr. Kemp is expected to testify regarding his knowledge of the facts and circumstances
15 surrounding the subject event as well as the allegations set forth in the Complaint.

16 2. Sgt. Gregory Dawson
17 c/o Kaempfer Crowell
18 1980 Festival Plaza Drive, Suite 650
19 Las Vegas, Nevada 89135

20 Sgt. Dawson is expected to testify regarding his knowledge of the facts and
21 circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

22 3. Captain Nita Schmidt
23 c/o Kaempfer Crowell
24 1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

Captain Schmidt is expected to testify regarding his knowledge of the facts and
circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

4. Officer Hugh Hardy
c/o Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

Officer Hardy is expected to testify regarding his knowledge of the facts and

1 circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

2 5. Person Most Knowledgeable of Las Vegas Metropolitan Police Department
3 c/o Kaempfer Crowell
4 1980 Festival Plaza Drive, Suite 650
5 Las Vegas, NV 89135

6 This witness is expected to testify regarding his/her knowledge of the facts and
7 circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

8 6. Person Most Knowledgeable of Clark County Detention Center
9 c/o Kaempfer Crowell
10 1980 Festival Plaza Drive, Suite 650
11 Las Vegas, NV 89135

12 This witness is expected to testify regarding his/her knowledge of the facts and
13 circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

14 7. Person Most Knowledgeable of Naphcare
15 c/o Lewis Brisbois Bisgaard & Smith
16 6385 S. Rainbow Boulevard, Suite 600
17 Las Vegas, Nevada 89118

18 This witness is expected to testify regarding his/her knowledge of the facts and circumstances
19 surrounding the subject event as well as the allegations set forth in the Complaint.

20 8. Dr. Larry Williamson
21 c/o Lewis Brisbois Bisgaard & Smith
22 6385 S. Rainbow Boulevard, Suite 600
23 Las Vegas, Nevada 89118

24 Dr. Williamson is expected to testify regarding his knowledge of the facts and
circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

9. Scott Blondeaux, RN
c/o Lewis Brisbois Bisgaard & Smith
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

Mr. Blondeaux is expected to testify regarding his knowledge of the facts and
circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

10. Dr. Harry Duran
c/o Lewis Brisbois Bisgaard & Smith
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

Dr. Duran is expected to testify regarding his knowledge of the facts and circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

11. HAS Kendra
c/o Lewis Brisbois Bisgaard & Smith
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

HAS Kendra is expected to testify regarding her knowledge of the facts and circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

12. HAS Meyer
c/o Lewis Brisbois Bisgaard & Smith
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

HAS Meyer is expected to testify regarding his knowledge of the facts and circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

13. Officer Matthew Garley, P15652
c/o Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

Officer Garley is expected to testify regarding his knowledge of the facts and circumstances surrounding the subject event as well as the allegations set forth in the Complaint.

14. John G. Peters, Jr., Ph.D, M.B.A., CLS
209 South Stephanie Street, Suite B249
Henderson, NV 89012

Dr. Peters is expected to testify on Clark County Detention Center's policies, practices, procedures and training of Corrections Officers generally. Dr. Peters will testify as to his examination of the facts in this matter in comparison to the facts with the accepted, standards and the appropriate or inappropriate actions of Sgt. Dawson, Captain Schmidt and Officer Hardy

related to the incidents alleged in the Complaint.

15. Thomas D. Fowlkes, M.D.
1203 Medical Park Dr.
Oxford, MS 38655

Dr. Fowlkes is a correctional medicine physician who is expected to offer his expert opinions as to Plaintiff TERRELL DESHON KEMP, SR.'s alleged medical conditions resulting from the incident(s) and action(s) which are the subject of Plaintiff's First Amended Complaint. Dr. Fowlkes will testify as to the reasonableness and necessity of Plaintiff's medical treatment provided at the Clark County Detention Center, Plaintiff's alleged serious medical need, and whether Defendants were deliberately indifferent to Plaintiff's alleged serious medical needs. Dr. Fowlkes will also testify regarding the existence and extent of Plaintiff's pre-incident and postincident injuries/conditions, as well as Plaintiff's prognosis. Dr. Fowlkes is also expected to give rebuttal opinions in response to other witnesses or experts designated in this matter. He reserves the right to supplement and/or revise his report as new information is provided.

IX. Designation of deposition to be offered and counter-designations.

A. Kemp

Kemp may offer his own deposition in its case in chief, if any.

B. Officer Hardy

Hardy may offer Kemp's deposition for impeachment or in the event of unavailability.

X. Exhibits

A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any grounds.

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Document	Bates	No Objections to Authenticity	No Objections
Officer Hardy's responses to First Set of Interrogatories	N/A	*	
LVMPD's responses to First Set of Interrogatories	N/A	*	
LVMPD Defendants' responses to First Set of Requests for Production of Documents	N/A	*	
Various NaphCare Records	Miscellaneous	*	
Kemp's grievances related to the incident on July 26, 2016	Miscellaneous	*	
Pages of Citizen Review Board Complaint, CR2016-109	Miscellaneous	*	**
CCDC SOP 09.11.01 – Use of Force	LVMPD001570-LVMPD001601	*	**
Training Logs of Officer Hugh Hardy	LVMPD001665-LVMPD001703	*	**

A. Officer Hardy's exhibits:

Document	Bates	No Objections to Authenticity	No Objections
1. Inmate Summary	LVMPD000001	*	
2. Inmate Assessments	LVMPD000002-LVMPD000008	*	
3. Inmate Incident History (3-1-06 - 12-17-18)	LVMPD000009-LVMPD000017	*	
4. Inmate Incident History (7-26-16 - 1-10-19)	LVMPD000018-LVMPD000020	*	
5. Inmate Request Report	LVMPD000023-LVMPD000036	*	
6. Inmate Request/Grievance Forms	LVMPD000037-LVMPD000271	*	

Document	Bates	No Objections to Authenticity	No Objections
7. Inmate Transfer Memo	LVMPD000272	*	
8. CCDC Accounting Records	LVMPD000280- LVMPD000293	*	
9. CCDC Inmate Housing History	LVMPD000294	*	
10. LVMPD Photograph/Information Sheet	LVMPD000335	*	
11. Temporary Custody Records	LVMPD000337- LVMPD000345	*	
12. NaphCare Records	LVMPD000348- LVMPD001504	*	
13. Citizen Review Board records for CR2016-109	LVMPD001512- LVMPD001521	*	
14. Internal Affairs Records for SOC2016-0710	LVMPD001522- LVMPD001531	*	
15. Citizen Review Board records for CR2016-121	LVMPD001532- LVMPD001539	*	
16. Internal Affairs Records for SOC2016-0741	LVMPD001540- LVMPD001546	*	
17. Citizen Review Board Records for CR2016-162	LVMPD001547- LVMPD001553	*	
18. Citizen Review Board Records for CR2017-127	LVMPD001554- LVMPD001560	*	
19. Disk Containing video of 9/1/2016 Hearing before Judge DelaCruz	LVMPD001561	*	
20. CCDC SOP 14.00.00 – Inmate Requests/Grievances and Complaints/Grievances Against Staff	LVMPD001562- LVMPD001569	*	**
21. CCDC SOP 09.11.01 – Use of Force	LVMPD001570- LVMPD001601	*	**

Document	Bates	No Objections to Authenticity	No Objections
22. CCDC SOP 13.00.00 – Medical Services	LVMPD001602-LVMPD001633	*	**
23. CCDC SOP 17.01.14 – Booking Intake and Holding	LVMPD001634-LVMPD001664	*	**
24. Training Logs of Officer Hugh Hardy	LVMPD001665-LVMPD001703	*	**
25. Dr. Peters’ initial expert report, fee schedule, curriculum vitae, and list of prior testimony		*	
26. Dr. Peters’ supplemental expert report		*	
27. Thomas D. Fowlkes’ Report	WKN-FOWLKES 00001-00014	*	
28. Thomas D. Fowlkes’ CV	WKN-FOWLKES 00015-00019	*	
29. Thomas D. Fowlkes’ Testimony History	WKN-FOWLKES 00020-00023	*	
30. Thomas D. Fowlkes’ Fee Schedule	WKN-FOWLKES 00024	*	
31. Plaintiff’s Responses to LVMPD’s Requests For Admissions		*	
32. Plaintiff’s Responses to Dawson’s Requests for Admissions		*	
33. Plaintiff’s Responses to Hardy’s Requests for Admissions		*	
34. Plaintiff’s Responses to Dawson’s Interrogatories		*	
35. Plaintiff’s Responses to Hardy’s Interrogatories		*	

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XI. Trial Dates

At the status conference in this matter, this Court ordered the parties to meet and confer about dates that counsel was available for trial in December 2023 and January 2024. The parties have met and conferred and agreed that they are available to begin trial on January 16, 2024, in this matter.

In the event that is an inconvenient date for the Court, the Parties are available as follows: April 15, 2024 and April 29, 2024.

DATED this 10th day of October, 2023.

DATED this 10th day of October, 2023.

KAEMPFER CROWELL

SNELL & WILMER

By: /s/ Lyssa S. Anderson

By: /s/ Christian Ogata

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Terrell Deshon Kemp, Sr.

XI.

ACTION BY THE COURT

The Court GRANTS in part the [159] Stipulation to Continue trial and [160] Proposed Pretrial Order. This case is set for jury trial on **May 6, 2024 at 8:30 a.m.** and Calendar call will be held on **April 2, 2024 at 1:30 p.m.** An Amended Order Regarding trial shall issue in 2024.

DATED this the 13th day of October, 2023.



UNITED STATES DISTRICT JUDGE